



**STATEMENT OF THE ILLINOIS ROAD AND TRANSPORTATION BUILDERS  
ASSOCIATION  
TO THE ILLINOIS STATE SENATE COMMITTEE ON PROCUREMENT  
April 27, 2011**

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As a statewide organization representing over 400 Illinois companies, the Illinois Road and Transportation Builders Association (IRTBA) aims to promote, protect and improve the transportation infrastructure in Illinois. We represent construction and design firms, employing thousands of families that support Illinois' roadways, waterways, railways and airports. Our membership is comprised of large, small, and disadvantaged businesses, aiming to provide fast, safe, and efficient modes of transportation to citizens across the state.

1. Introduction

While a number of other associations may provide testimony about various other procurement issues, IRTBA membership issues revolve around infrastructure design and construction. It is necessary that this Committee and the legislature consider the unique circumstances surrounding infrastructure engineers and contractors in formulating any changes to procurement policies. One set of rules for Central Management Services or Capital Development Board may not be appropriate for Illinois Department of Transportation (IDOT) or the Illinois State Toll Highway Authority (Tollway).

The IRTBA supports efforts to reform the procurement system provided that the changes promote sound business practices and increase opportunities for companies to compete and work in the state. Recent efforts to reform the system, however, have lead to waste, confusion, inefficiencies, fewer opportunities, and reduced competition. It is hoped not only that those measures can be repealed, but that other proactive measures can be implemented to move Illinois forward.

2. Further Amendments to Public Act 96-0795 Are Required

Recent changes enacted under P.A. 96-0795 (SB 51) may have been intended to ensure transparency of the procurement process. Unfortunately, they have had the unintended impact of stifling communication, innovation, and collaboration between agencies and industry. In addition, this Act has ultimately diminished opportunities available to smaller, disadvantaged, female and minority owned businesses.

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Complicating the issue even more is the lack of knowledge and training for the implementation of the provisions of SB 51 Ethical Standards. The rules have changed constantly and are subject to varied interpretations by agencies, and even among single agency staff.

Furthermore, a recent trailer bill that specifically affected IDOT did not appear to have force and effect upon the Tollway. The Tollway therefore took the position that it must impose the more onerous subcontractor certification provisions, while IDOT does not. Contractors who do business with both agencies must juggle conflicting rules.

In addition, discussions regarding innovation and specification reviews should be included in permissible ex parte communications. The state has benefited from the partnerships on IDOT specifications between the agency and industry. This open dialogue has enabled the state to realize cost savings by creating realistic and realizable specifications on jobs. Indeed, under the new paradigm, firms that propose innovative solutions are actually punished because they cannot bid on work that is related to discussions with agency officials. This Act should be further amended to require disclosure of discussions only on projects that are advertised for bid, and should not require disclosure once a contract is awarded. The current sealed bidding process for contractors already provides for an ethical process in the procurement of construction services for the State's infrastructure needs. Impairing communications does not promote ethics. Instead, it inhibits efficiency, competition, safety, and innovation.

### **3. Require Electronic Bidding and Submission of Materials**

IRTBA supports the utilization of technology to improve procurement efficiencies. Electronic bidding is the cornerstone of a paperless bid letting system, allowing agencies to confidently prepare, distribute, receive, and process secure electronic bid files. Electronic bidding is the type of reform needed in Illinois that can reduce costly bidding errors and time involved in submitting a bid, and can save Illinois' transportation agencies many hours in data processing. In addition, the state stands to obtain better overall value for the taxpayer dollar through increased efficiencies and reduced pricing. The use of electronic bid receipt can also encourage increased bidder responses. Over 40 state Departments of Transportation currently utilize electronic bidding – it is well past time that Illinois makes its own bid to join the 21<sup>st</sup> century with them.

### **4. Consolidate Certifications**

Illinois transportation agencies currently require an enormous degree of redundancy in the procurement process. Contractors are required to submit individual Registered Subcontractor "Certifications",

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“Disclosures”, and “Financial Information & Potential Conflicts of Interest Disclosure” documents for each and every contract and bid. This is time consuming and overly burdensome on the general contractors. In addition, this requires the agencies to repeatedly review the same documents.

Clearly the law intends that the contractor is qualified, and complies with the state’s rigorous ethics requirements. Under the current Kafkaesque system, State bureaucrats are not allowed to acknowledge that a contractor is obviously certified unless the exact same forms are submitted with every bid. The public is hardly served when Illinois road builders are required to certify in every bid that they do not do business with Iran. The State of Illinois should require only an annual certification process, in which the state’s interests are properly protected, but contractors are not required to include redundant forms that lead not only to inefficiencies, but may lead a low bidder to lose out due to a filing error. A universal procurement form, that would include all of the required documentation and certification, could allow for a streamlined “Registered Contractor” system in Illinois. It would be beneficial if this information could also be submitted electronically.

### **5. Require Subcontractor Certification**

Currently, prime contractors are required to prequalify with the Illinois Department of Transportation. They are also required to submit subcontractors with bid whom they know nothing more about than what has been provided in the bid documents the night before the bid is due. IRTBA supports efforts to prequalify subcontractors in the same way that prime contractors are prequalified. This will increase access to subcontractors and ensure that firms have the capacity to compete on projects. A number of states have instituted this measure to the benefit of efficient delivery of services to taxpayers. Prime contractors are experiencing untimely responses from subcontractors. These have caused delays, and extend the time required for the ultimate approval process. There is no “scorecard” for the prime contractor to analyze the approval process of those Subcontractors “submitted” vs. those “approved.” Transparency will not only give the public greater confidence in the system, but will provide contractors with valuable information in determining which subcontractors may be a good prospect with which to do business for the benefit of the State and its citizens.

In addition, greater clarity is required for the basis for vendor and bidder disbarment. This is currently the responsibility of the Secretary of State and needs to be transferred to the states Chief Procurement Officers.

### **6. Modify Disadvantaged Business Enterprise Documentation Requirements**

The IRTBA proposes to amend the burdensome paperwork requirements for DBE initiatives. A recent legislative change severely burdened both the contractor and subcontractor community by requiring

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excessive paperwork to be submitted with every bid, rather than allowing for the “read low” bidder to provide the detail shortly after the bid. The result has led to low bidders being rejected due to minor mathematical errors, which has greatly increased the cost of certain projects. The nature of infrastructure bidding also means that the pre-bid paperwork burden on contractors has reduced competition because of the inability to bid on multiple jobs. Under the current procurement processes, contractors are required to submit DBE paperwork that includes lines items associated with DBE subcontractors, apprentice and training certificates, and workforce and utilization reports with each bid. These detailed documents should not be required of all bidders. Instead, the company to whom the contract is awarded should be required to submit this information. In addition, in the event a contractor is required to request a modification based upon good faith efforts, such requirement should be associated only with the “read low” bid and in electronic format.

### **7. Address Prompt Award of Contracts, Reviews and Payments**

While Illinois has been proactive in legislatively addressing the prompt payment of bills, the state is still plagued by late remuneration issues and the slow awarding of contracts. IRTBA supports reforms that will create processes that allow for the timely design, regulatory approval, awarding, and prompt construction of projects. Additional issues include the frequent lack of 404 Permits, right-of-way problems, and utility conflicts.

### **8. Conclusion**

Infrastructure design and construction firms do not produce cookie cutter products that can be purchased off the shelf. They create systems that are complex and unique, and accordingly require flexibility from the State of Illinois and its agencies in order to produce the best product for Illinois. Procurement reforms can help make that happen. On behalf of the IRTBA, I thank the Committee for the opportunity to provide industry comments on this important issue.

*Please feel free to contact Michael J. Sturino, IRTBA President and CEO regarding this statement or for any additional information.*